

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s) : Jean-Claude VOLKMANN et al.
Serial No. : 10/564,247
For : DEVICE FOR EJECTING A LIQUID OF PASTY PRODUCT
Filed : April 24, 2006
Examiner : Sunil K. Singh
Art Unit : 3732
Confirmation No. : 8015

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New York, NY 10151

**PRE-APPEAL BRIEF REQUEST FOR REVIEW
SUBMITTED WITH A PETITION FOR A TWO-MONTH EXTENSION**

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Claims 1-10 are pending in this application and are rejected in the Final Office Action mailed on June 21, 2011 (the "Office Action").

I. REASON FOR THE REQUEST

Appellants respectfully request that the Panel review the rejections of claims 1-10 in this application. Claims 1-4 and 10 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 4,444,560 to Jacklich ("Jacklich") in view of U.S. Patent No. 5,183,388 to Kumar ("Kumar"). Claims 1-10 are rejected under § 103(a) as allegedly unpatentable over U.S. Patent No. 4,340,367 to Vadas ("Vadas") in view of Kumar.

II. ARGUMENTS

Claim 1, the sole independent claim, recites, *inter alia*:

A device for ejecting a liquid or pasty product, the device comprising:
a body...
a drive cylinder...comprising **an articulated lever...releasably connected** to the body by means of **a joint comprising a pivot pin and a slot, the pivot pin adapted to elastically deform to engage the slot for facilitating attachment and disassembly of the lever with respect to the body without requiring a tool.**

(a) Jacklich and Kumar fail to disclose or render predictable a **lever is releasably connected to the body by means of a joint comprising a pivot pin and a slot, the pivot pin adapted to elastically deform to engage the slot for facilitating attachment and disassembly of the lever with respect to the body without requiring a tool** as recited in the claim.

i) On page 2 of the Office Action, the Examiner asserts Jacklich discloses, *inter alia*, “a lever 11 capable of being releasably connected...wherein the lever 11 is connected by means of a joint (the hinge connection at 51) with the ability to be dislocated or attached without requiring a tool...and wherein the joint comprises a pivot pin and a slot (Figs. 1, 2).” Appellants disagree.

(1) Jacklich fails to disclose **a joint comprising a pivot pin and a slot**. The Examiner cites to Figs. 1 and 2 to support the alleged disclosure of this feature of the reference. Appellants submit no such disclosure can be found in the figures.

Figure 1, a perspective view (*Jacklich*, col. 1, lines 41-42) illustrates the lever 11 as a solid with a substantially circular hole providing the pivot for operating handle 53 (*Id.*, col. 2, lines 22-23). The joint at 51 does not comprise a slot.

Figure 2, shown partially in section, illustrates the lever (11), operating handle (53), lug (51) and pivot pin (unnumbered) in section. The pivot is illustrated as having a round cross section in a round passage in the lug. Accordingly, the joint at 51 does not comprise a slot.

(2) Appellants note the present claims do not recite a lever “capable of being releasably connected” as recited in the Office Action. Presently pending claims recite an **articulated lever is releasably connected**; Jacklich fails to disclose an **articulated lever is releasably connected**.

The Examiner does not cite a portion of the reference in support of the allegedly releasably connected lever. Appellants submit no portion of Jacklich, including the figures, discloses or renders predictable such a connection.

(3) Appellants note the present claims do not recite a joint “with the ability to be dislocated or attached” as recited in the Office Action. Claim 1 reads a joint **facilitating**

attachment and disassembly of the lever with respect to the body without requiring a tool.

Jacklich fails to disclose or render predictable such a joint.

The Examiner does not cite a portion of the reference in support of the allegedly disclosed feature. The Office Action merely cites to Figs. 1 and 2 which do not suggest a joint provided for **facilitating attachment and disassembly of the lever with respect to the body without requiring a tool.**

Conclusory statements are insufficient to establish prima facie obviousness. As M.P.E.P. 2143.01 (IV) recites, “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

Fig. 1, illustrating Jacklich’s device held in the palm of the operator’s hand (*Jacklich*, col. 1, lines 60-61), suggests the pivot pin connecting the lever 11 to the lug 51 does not extend beyond the outside surface of the lever. If the pivot pin did so extend, the operator would experience at least discomfort, and likely injury, from the protruding pin. Accommodating right- and left-handed use suggests the pivot pin does not protrude from either side of the lever.

Consequently, in order to remove the pin for disassembly, a tool is required to access and displace the pivot pin. Therefore, Jacklich does not disclose or render predictable a joint **facilitating attachment and disassembly of the lever with respect to the body without requiring a tool** as recited in the claim.

(4) Page 2 of the Office Action concedes Jacklich fails to disclose “the pin being adapted to elastically deform to engage the slot.” On page 3 of the Office Action, the Examiner asserts Kumar teaches “a pin (23) and a slot (1).” Appellants respectfully disagree.

(a) Kumar discloses a pin or plug to retain a wire (*Kumar*, col. 4, line 40-43). Nothing in the reference suggests the pin or plug is operates as a **pivot pin to releasably connect** a body to **an articulated lever** as claimed. One of skill in the art would not understand a pin or plug to have the characteristics of, or function as, a **pivot pin**.

(b) The pin or plug is engaged in a bore (*Id.*, col. 3, line 31) or a hole (*Id.*, col. 4, line 50 as cited by the Examiner). Alleged “slot (1)” is described throughout the reference as a

“hole”. Consequently, Kumar fails to teach a **pivot pin adapted to elastically deform to engage the slot** as recited in the claims.

(5) In the event that Kumar can be found to disclose a slot, which Appellants submit it fails to do, Jacklich modified by Kumar fails to disclose or render predictable a **pin adapted to elastically deform to engage the slot for facilitating attachment and disassembly of the lever with respect to the** as claimed. Elastic deformation of the pin must be accompanied by displacement of the pin for assembly/disassembly. Deformation alone does not **facilitate[e] attachment and disassembly of the lever** as claimed.

(b) Vadas and Kumar fail to disclose or render predictable a **lever is releasably connected to the body by means of a joint comprising a pivot pin and a slot, the pivot pin adapted to elastically deform to engage the slot for facilitating attachment and disassembly of the lever with respect to the body without requiring a tool** as recited in the claim.

ii) On page 3 of the Office Action, the Examiner asserts Vadas adequately discloses “the lever is connected to the body by means of a joint (41,42) that is capable of dislocating/attaching without requiring a tool.” Appellants respectfully disagree.

(1) As indicated above, claim 1 recites, inter alia, **a joint comprising a pivot pin and a slot**. The Examiner has not indicated which elements of Vadas correspond to pivot pin or slot of the present invention. Appellants submit that a slot cannot be found in Vadas.

The hub 41 and pin 42, as cited in the Office Action, are discussed only in col. 3, lines 40-52 of Vadas, and illustrated only in Figs. 1, 5 and 6. A slot is neither described nor shown in any portion of the reference directed to the joint identified by the Examiner.

Appellants submit, because Vadas fails to disclose **a slot**, the reference also fails to disclose at least a **pivot pin...to engage the slot**.

(2) Vadas fails to disclose or render predictable a joint **facilitating attachment and disassembly of the lever with respect to the body without requiring a tool** as recited in the claims.

Appellants submit that nothing in the text of Vadas suggests a joint **facilitating attachment and disassembly of the lever with respect to the body without requiring a tool**. In the figures, particularly Fig. 5, pin 42 does not extend beyond ears 44 or 46. For reasons similar to those above regarding Jacklich, in order to access and displace the pin for attachment and disassembly of the lever to the body, a tool is required.

Consequently, a tool is required to displace the pivot pin for disassembly. Therefore, Vadas does not disclose a joint **facilitating attachment and disassembly of the lever with respect to the body without requiring a tool** as recited in the claim.

(3) Page 4 of the Office Action concedes that Vadas fails to disclose, among other things, "the pin being adapted to elastically deform to engage the slot." Kumar is relied upon for such a disclosure.

(a) As amply discussed above, Kumar fails to make such a disclosure. Accordingly, Kumar fails to correct this deficiency found in Vadas.

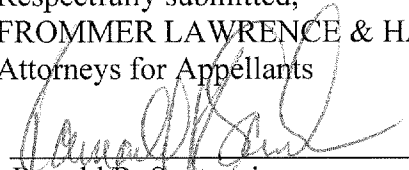
(4) In the event that Kumar can be found to disclose a slot, which Appellants submit it fails to do, Vadas modified by Kumar fails to disclose or render predictable a **pin adapted to elastically deform to engage the slot for facilitating attachment and disassembly of the lever with respect to the** as claimed for reasons similar to those discussed above.

CONCLUSION

In view of the foregoing remarks, Appellants' attorneys respectfully submit that independent claim 1 is patentable over the references cited. Claims 2-9, which depend from claim 1, are allowable as well. Accordingly, reconsideration and withdrawal of the rejections in the Office Action are respectfully requests, with prompt issuance of a Notice of Allowance.

Please charge any additional fees incurred by reason of this paper and not paid herewith, and credit any overpayment, to Deposit Account No. 50-0320.

Respectfully submitted,
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